

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PICTURE PATENTS, LLC,

Plaintiff,

v.

AEROPOSTALE, INC., DICK'S  
SPORTING GOODS, INC., CHARLOTTE  
RUSSE, INC., GSI COMMERCE  
SOLUTIONS, INC., FOGDOG, INC.,  
NATIONAL BASKETBALL  
ASSOCIATION, INC., NBA  
PROPERTIES, INC., NBA MEDIA  
VENTURES, LLC, MAJOR LEAGUE  
BASEBALL PROPERTIES, INC., MLB  
ADVANCED MEDIA, L.P., LINENS 'N  
THINGS, INC., TWEETER HOME  
ENTERTAINMENT GROUP, INC.,  
TWEETER NEWCO, LLC, TWEETER  
OPCO, LLC, BUY.COM, INC.,

Defendants.

Civil Case No. 07cv5567

**AFFIDAVIT IN SUPPORT OF NEW TWEETER'S MOTION TO DISMISS**

I, David Pearce, an adult, citizen, and resident of the Commonwealth of Massachusetts,  
after first being duly sworn, state under the penalty of perjury:

1. I am the Chief Financial Officer of Tweeter Opco, LLC. Defendant Tweeter Newco, LLC is the parent company of Tweeter Opco, LLC, but does not itself operate a business other than through its subsidiary, Tweeter Opco, LLC. Tweeter Opco, LLC and Tweeter Newco, LLC are collectively defined herein as ("New Tweeter").

2. In my position as Chief Financial Officer of Tweeter Opco, LLC, I have access to all records relating to New Tweeter's administration and business transactions. Based on my

review of those records and information, I have knowledge of the facts contained herein and am competent to testify thereto.

3. Both Tweeter Newco, LLC and Tweeter Opco, LLC were organized in 2007 under the laws of the State of Delaware. New Tweeter's principle places of business are located at 40 Pequot Way, Canton, Massachusetts, 02021. Neither Tweeter Opco, LLC nor Tweeter Newco, LLC are citizens nor residents of the State of New York.

4. Neither company is licensed to do business in New York and neither pay taxes in New York.

5. Neither company maintains a single office or retail location in New York, nor does either company have a New York address or telephone listing.

6. Tweeter Opco, LLC does not solicit business in New York. Since its organization in 2007, Tweeter Opco, LLC has not made a single sale in New York. Tweeter Opco occasionally installs equipment purchased outside of New York, but this accounts for less than one (1) % of New Tweeter's revenue.

7. Neither company has employees or agents in New York.

8. Neither company maintains a bank account in New York.

9. Neither company owns nor maintains real property in New York.

10. Tweeter Opco, LLC maintains the website [www.tweeter.com](http://www.tweeter.com). The website does not allow customers to place orders or make purchases online. The website's purpose is to provide information regarding Tweeter Opco's products, services, and retail locations.

FURTHER AFFIANT SAYETH NOT.

STATE OF MASSACHUSETTS )

COUNTY OF NORFOLK )



DAVID PEARCE

Subscribed and sworn to before me, a Notary Public, this 26<sup>th</sup> day of March, 2008.



My Commission Expires:

12/5/2014

